

HOUSE BILL 1689
By Bunch

AN ACT to amend Tennessee Code Annotated, Title 2;
Title 3; Title 4; Title 8 and Title 12, relative to the
awarding of state public contracts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by
adding the following as a new section:

12-4-123.

(a) Notwithstanding any other provision of this part to the contrary, state
contracts shall be awarded subject to this section.

(b) This section shall:

(1) Protect the integrity of the state's public contracting process by
ensuring that decisions regarding the awarding of state contracts are based upon
merit and are not influenced, in appearance or actuality, by political contributions
to a candidate for or holder of the office of governor, or any state or county
political party committee; and

(2) Clearly advance the best interests and taxpayers of the state of
Tennessee by banning the practice of pay to play and thus ensure that decisions
regarding the awarding of state contracts are based upon merit and are not
influenced, in appearance or actuality, by political contributions to a candidate for
or holder of the office of governor, or any state or county political party
committee.

(c) As used in this section:

(1) "Business entity" means a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this state or of any other state or foreign jurisdiction;

(2) "Interest" means the ownership or control of more than ten percent (10%) of the profits or assets of a business entity or ten percent (10%) of the stock in the case of a business entity that is a corporation for profit, as appropriate; and

(3) "State agency" means any of the principal departments in the executive branch of the state government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the general assembly and any office, board, bureau or commission within or created by the legislative branch, and any independent state authority, commission, instrumentality or agency.

(d)

(1) Firms or persons seeking state contracts must report all contributions made during the preceding four (4) years to any political organization organized under section 527 of the federal Internal Revenue Code that also meets the definition of a continuing political committee within the meaning of title 2, chapter 10.

(2) The state treasurer is authorized to disqualify a firm or person from bidding on or receiving a contract if the treasurer determines that such contributions constitute a conflict of interest.

(3) The state may not award any state contract in excess of seventeen thousand five hundred dollars (\$17,500) to any firm making a reportable contribution in excess of two hundred fifty dollars (\$250) during the previous four (4) years to a candidate committee or an election fund of any candidate for governor or the current holder of the office of governor, or any state or county political party committee;

(4) A firm or person who has contributed more than two hundred fifty dollars (\$250) to an elected official responsible for awarding contracts may not have more than ten percent (10%) ownership in a business awarded a no-bid contract by the state.

(e) This section governs all state contracts above the seventeen thousand five hundred dollar (\$17,500) threshold established by this section and does not expressly distinguish between state-funded contracts and those that may be funded in whole or in part with funds received from other sources.

(f) Not later than ten (10) days prior to entering into any contract having an anticipated value in excess of seventeen thousand five hundred dollars (\$17,500), except for a contract that is required by law to be publicly advertised for bids, a state agency, shall require any business entity bidding thereon or negotiating therefor, to submit along with its bid or price quote, a list of all political contributions as set forth in this subsection that are reportable by the recipient pursuant to the provisions of title 2, chapter 10, and that were made by the business entity during the preceding twelve month period, along with the date and amount of each contribution and the name of the recipient of each contribution. A business entity contracting with a state agency shall disclose contributions to any state, county, or municipal committee of a political party,

legislative leadership committee, candidate committee of a candidate for, or holder of, a state elective office, or any continuing political committee.

(g) The provisions of this section shall not apply to a contract when a public emergency requires the immediate delivery of goods or services.

(h) When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

(i) Any business entity that fails to comply with the provisions of this section shall be subject to a penalty imposed by the registry for election finance pursuant to § 2-10-110 in an amount to be determined by the registry which may be based upon the amount that the business entity failed to report.

(j) Any business entity making a contribution of money or any other thing of value, including an in-kind contribution, or pledge to make a contribution of any kind to a candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, or to a political party committee, legislative leadership committee, political committee or continuing political committee, which has received in any calendar year fifty thousand dollars (\$50,000) or more in the aggregate through

agreements or contracts with a public entity, shall file an annual disclosure statement with the registry of election finance setting forth all such contributions made by the business entity during the twelve (12) months prior to the reporting deadline.

(k)

(1) The registry shall prescribe forms and procedures for the reporting required in subsection (j) of this section which shall include, but not be limited to:

(A) The name and mailing address of the business entity making the contribution, and the amount contributed during the twelve (12) months prior to the reporting deadline;

(B) The name of the candidate for, or the holder, of any public office having ultimate responsibility for the awarding of public contracts, candidate committee, joint candidates committee, political party committee, legislative leadership committee, political committee or continuing political committee receiving the contribution; and

(C) The amount of money the business entity received from the public entity through contract or agreement, the dates, and information identifying each contract or agreement and describing the goods, services or equipment provided or property sold.

(2) The registry shall maintain a list of such reports for public inspection both at its office and through its Internet site.

(l) The provisions of this section may not be construed to apply to contracts in existence on the effective date of this act.

SECTION 2. The registry is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.